

COMMISSIONERS
KRISTIN K. MAYES – Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

ORIGINAL

OPEN MEETING ITEM



0000108391

EXECUTIVE DIRECTOR

ARIZONA CORPORATION COMMISSION

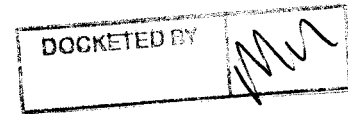
DATE: MARCH 15, 2010

DOCKET NO.: T-04280A-09-0011

TO ALL PARTIES:

Arizona Corporation Commission
DOCKETED

MAR 15 2010



Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Order on:

BUSINESS PRODUCTIVITY SOLUTIONS, INC.
(CANCEL CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

MARCH 24, 2010

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

MARCH 31, 2010 and APRIL 1, 2010

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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EXECUTIVE DIRECTOR

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES, Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

8 IN THE MATTER OF THE APPLICATION OF
9 BUSINESS PRODUCTIVITY SOLUTIONS, INC.
FOR APPROVAL TO CANCEL ITS
CERTIFICATE OF CONVENIENCE AND
NECESSITY.

DOCKET NO. T-04280A-09-0011

DECISION NO. _____

ORDER

10 Open Meeting
11 March 31 and April 1, 2010
12 Phoenix, Arizona

13 **BY THE COMMISSION:**

14 Having considered the entire record herein and being fully advised in the premises, the
15 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

16 **FINDINGS OF FACT**

17 1. On March 25, 2005, the Arizona Corporation Commission ("Commission") issued
18 Decision No. 67727, granting Business Productivity Solutions, Inc. ("BPS") a Certificate of
19 Convenience and Necessity ("CC&N") to provide competitive resold intrastate interexchange
20 telecommunication services in Arizona.

21 2. On January 12, 2009, BPS filed with the Commission an application to cancel its
22 CC&N to provide competitive resold intrastate interexchange telecommunication services in Arizona.
23 BPS' application indicates that as of August 31, 2008, BPS ceased to offer telecommunication
24 services in Arizona.

25 3. On January 10, 2010, by Procedural Order, the Commission's Utilities Division
26 ("Staff") was directed to update the Commission on the status of BPS' application.

27 4. On February 6, 2010, Staff filed a Staff Report recommending approval of BPS'
28 application to cancel its CC&N and waiver of A.A.C. R14-2-1107. The Staff Report states that BPS

1 provided responses to Staff's data requests which state that BPS has not provided service to
2 residential or business customers since September 2008. (S.R. at 1) According to the Staff Report,
3 BPS did not provide notice to its customers prior to discontinuing service pursuant to A.A.C. R14-2-
4 1107. (Id.) BPS stated that it did not notify customers because BPS had no residential or business
5 customers to notify; no customers were transferred to other telecommunications carriers; BPS'
6 customers had already switched to other service providers; BPS never collected advances, deposits,
7 or prepayments from its customers; and BPS has no assets, facilities, or employees in Arizona. (Id.)
8 Subsequent to filing the above-captioned application, BPS filed a request for waiver of the
9 publication requirements pursuant to A.A.C. R14-2-1107(B) based on the above information.¹

10 5. Staff reported that the Commission's Compliance Section reported no delinquencies
11 for BPS; zero complaints, inquiries, or opinions were filed against BPS from January 2007 through
12 January 20, 2010; and BPS is not in good standing with the Commission's Corporations Division for
13 failure to file a 2009 Annual Report.

14 6. Based on the above factors, Staff recommends approval of BPS' application to cancel
15 its CC&N and waiver of the legal notice requirement in A.A.C. R14-2-1107(B).

16 7. In Commission Decision No. 67404 (November 2, 2004), the Commission discussed
17 that it would render A.A.C. R14-2-1107 meaningless and would run afoul of the rule's intent and
18 plain language to exempt a Company from the requirements of the rule because the Company has no
19 customers due to its discontinuation of service. However, the intent of the rule is to ensure that
20 existing customers have advance notice of a telecommunications provider's pending plan to
21 discontinue service such that they will be afforded an opportunity to procure service through an
22 alternative provider prior to such discontinuance.

23 8. In the instant matter, ESI was not serving any customers at the time the application
24 was filed, ESI's customers have switched to other service providers, and ESI does not hold any
25 customers' advances, prepayments, and/or deposits. Therefore, we find under the circumstances the
26 requirements of A.A.C. R14-2-1107 (B) should be waived.

27
28 ¹ BPS filing dated February 17, 2010.

1 9. Staff's recommendation is reasonable and should be adopted.

2 CONCLUSIONS OF LAW

3 1. BPS is a public service corporation within the meaning of Article XV of the Arizona
4 Constitution and A.R.S 40-281 and 40-282.

5 2. The Commission has jurisdiction over BPS and the subject matter of the Application.

3. The cancellation of BPS' authority to provide competitive resold intrastate interexchange telecommunication services and its related tariffs is in the public interest.

8 4. Staff's recommendations are reasonable and should be adopted.

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ORDER

IT IS THEREFORE ORDERED that the application of Business Productivity Solutions, Inc. for cancellation of its Certificate of Convenience and Necessity to provide competitive resold intrastate interexchange telecommunications services in Arizona is hereby approved.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2010.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

YBK:db

1 SERVICE LIST FOR: BUSINESS PRODUCTIVITY SOLUTIONS, INC.

2 DOCKET NOS.: T-04280A-09-0011

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